



129 JAN 2004

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Robert M. Barrett
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In re Application of
AFFOLTER, et al.
U.S. Application No.: 09/936,367
PCT No.: PCT/EP00/01796
Int. Filing Date: 02 March 2000
Priority Date: 11 March 1999
Attorney Docket No.: 112843-029
For: EXPRESSION OF PROTEOLYTIC
ENZYMES IN KOJI MOLD IN THE
PRESENCE OF CARBON SOURCES

DECISION ON PETITIONS
UNDER 37 CFR 1.181
AND 1.137(b)

This decision is in response to applicant's correspondence filed 31 July 2003 which is being treated as a petition under 37 CFR 1.181 and "Petition For Revival of an Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 22 January 2004. No petition fee is due for the petition under 37 CFR 1.181. Applicant included authorization to charge the \$1330.00 petition to revive fee to Deposit Account No. 02-1818.

BACKGROUND

On 02 March 2000, applicant filed international application PCT/EP00/01796, which claimed priority of an earlier application filed 11 March 1999. A Demand for international preliminary examination, in which the United States was elected was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 11 September 2001.

On 11 September 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an unexecuted declaration; a copy of the international search report and a First preliminary amendment.

On 30 October 2001, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was also informed of the need to provide a nucleotide and/or amino acid sequence disclosure in compliance with 37 CFR 1.821-1.825. Applicant was afforded two months to file the response.

On 23 January 2002, applicant responded with an executed combined declaration and power of attorney.

On 30 May 2002, the present application became abandoned as to the United States for failure to fully respond to the Form PCT/DO/EO/905 mailed 30 October 2001.

On 31 July 2003, applicant filed copies of papers purportedly filed 28 March 2003 including a paper sequence listing and diskette for the present application.

On 22 January 2004, applicant filed the present petition to revive pursuant to 37 CFR 1.137(b).

DISCUSSION

I. Petition Under 37 CFR 1.181

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Applicant's 31 July 2003 filing includes a copy of a date-stamped postcard receipt. The postcard identifies the application by applicant, application number and docket number. Among the items listed on the receipt are: "6. Sequence Listing Statement (1 page); 7. Sequence Listing Document (3 pages); and 8. Diskette Containing Computer Readable Form of Sequence Listing (1 diskette)" The receipt is stamped "DT13 Rec'd PCT/PTO 28 MAR 2003." Thus, it is clear that applicant filed these items on 28 March 2003. As such, it is proper to accept the papers filed on 31 July 2003 as having been filed 28 March 2003. Thus, it is proper to grant applicant's petition under 37 CFR 1.181.

II. Petition Under 37 CFR 1.137(b)

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (2), applicant included authorization to charge the \$1330.00 petition fee to Deposit Account No.: 02-1818.

As to Item (3), applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies Item (3).

With regard to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

Thus, applicant has satisfied Items (2) - (4) above.

However, with regard to Item (1), the proper response was the required sequence listing pursuant to 37 CFR 1.821-1.825. The computer readable form filed 31 July 2003 (held to have been filed 28 March 2003 per the above) was found to be non-compliant and a corrected diskette is needed. (See attached copy of CRF Problem Report.) Accordingly, the proper reply has not been furnished.

For the reasons stated above, the petition for revival cannot be granted at this time and the application remains abandoned.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is GRANTED.

Applicant's petition under 37 CFR 1.137(b) is DISMISSED.

This application remains abandoned as to the United States of America.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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Office of PCT Legal Administration
Tel: (703) 305-0130
Fax: (703) 308-6459

#7

CRF Errors Edited by the STIC Systems Branch

Serial Number: 09/936,367

CRF Edit Date: 12/11/03
Edited by: AC

ENTERED

Kealigned nucleic acid/amino acid numbers/text in cases where the sequence text "wrapped" to the next line

Corrected the SEQ ID NO. Sequence numbers edited were:

Inserted or corrected a nucleic number at the end of a nucleic line. SEQ ID NO's edited:

Deleted: / invalid beginning/end-of-file text ; / page numbers

Inserted mandatory headings/numeric identifiers, specifically:

Moved responses to same line as heading/numeric identifier, specifically:

Other:



PCT

RAW SEQUENCE LISTING

PATENT APPLICATION: US/09/936,367

DATE: 12/11/2003

TIME: 11:17:12

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PATENT APPLICATION: US/09/936,367

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VERIFICATION SUMMARY

PATENT APPLICATION: US/09/936,367

DATE: 12/11/2003

TIME: 11:17:13

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L:10 M:271 C: Current Filing Date differs, Replaced Current Filing Date



PCT

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Does Not Comply
Corrected Diskette Needed

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 88 gttctcattc aaaccggcg gcttacgtct agccgcggac gtaagcacga agagtgtgt 3840
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 90 atcaagcgac gtcgtcccg cttcatcctc atcagcgggt gtatctctgg agacaagatg 3960
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 93 ctttagattgt caccacaccc tcgacgtatgt cgagcaatgg aagactcacc ttctgagcca 4140
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 95 cagcgacacc cccgaacaga aaggatggga tcgcattgc 4238
 98 <210> SEQ ID NO: 2
 99 <211> LENGTH: 431
 100 <212> TYPE: PRT
 101 <213> ORGANISM: Aspergillus oryzae
 103 <400> SEQUENCE: 2
 104 Met Pro Pro Pro Ala Ser Ser Val Asp Phe Thr Asn Leu Leu Asn Pro

RAW SEQUENCE LISTING

PATENT APPLICATION: US/09/936,367

DATE: 12/11/2003

TIME: 11:13:11

Input Set : A:\PTO.AMC.txt

Output Set: N:\CRF4\12082003\I936367.raw

105	1	5	10	15
107	Gln Asn Asn Glu Thr Gly Ser Ala Pro Ser Thr Pro Val Asp Ser Ser			
108	20	25	30	
110	Lys Ala Pro Ser Thr Pro Ser Ser Thr Gln Ser Asn Ser Thr Met Ala			
111	35	40	45	
113	Ser Ser Val Ser Leu Leu Pro Pro Leu Met Lys Gly Ala Arg Pro Ala			
114	50	55	60	
116	Thr Glu Glu Ala Arg Gln Asp Leu Pro Arg Pro Tyr Lys Cys Pro Leu			
117	65	70	75	80
119	Cys Asp Arg Ala Phe His Arg Leu Glu His Gln Thr Arg His Ile Arg			
120	85	90	95	
122	Thr His Thr Gly Glu Lys Pro His Ala Cys Gln Phe Pro Gly Cys Thr			
123	100	105	110	
125	Lys Arg Phe Ser Arg Ser Asp Glu Leu Thr Arg His Ser Arg Ile His			
126	115	120	125	
128	Asn Asn Pro Asn Ser Arg Arg Ser Asn Lys Ala His Leu Ala Ala Ala			
129	130	135	140	
131	Ala Ala Ala Ala Ala Gly Gln Gly Gln Glu Asn Ala Met Val Asn			
132	145	150	155	160
134	Val Thr Asn Ala Gly Ser Leu Met Pro Pro Pro Thr Lys Pro Met Thr			
135	165	170	175	
137	Arg Ser Ala Pro Val Ser Gln Val Gly Ser Pro Asp Val Ser Pro Pro			
138	180	185	190	
140	His Ser Phe Ser Asn Tyr Ala Gly His Met Arg Ser Asn Leu Gly Pro			
141	195	200	205	
143	Tyr Ala Arg Asn Thr Glu Arg Ala Ser Ser Gly Met Asp Ile Asn Leu			
144	210	215	220	
146	Leu Ala Thr Ala Ala Ser Gln Val Glu Arg Asp Glu Gln His Phe Gly			
147	225	230	235	240
149	Phe His Ala Gly Pro Arg Asn His His Leu Phe Ala Ser Arg His His			
150	245	250	255	
152	Thr Gly Arg Gly Leu Pro Ser Leu Ser Ala Tyr Ala Ile Ser His Ser			
153	260	265	270	
155	Met Ser Arg Ser His Phe His Glu Asp Glu Asp Gly Tyr Thr His Arg			
156	275	280	285	
158	Val Lys Arg Ser Arg Pro Asn Ser Pro Asn Ser Thr Ala Pro Ser Ser			
159	290	295	300	
161	Pro Thr Phe Ser His Asp Ser Leu Ser Pro Thr Pro Asp His Thr Pro			
162	305	310	315	320
164	Leu Ala Thr Pro Ala His Ser Pro Arg Leu Arg Ser Leu Gly Ser Ser			
165	325	330	335	
167	Glu Leu His Leu Pro Ser Ile Arg His Leu Ser Leu His His Thr Pro			
168	340	345	350	
170	Ala Leu Ala Pro Met Glu Pro Gln Pro Glu Gly Pro Asn Tyr Tyr Ser			
171	355	360	365	
173	Pro Ser Gln Ser His Gly Pro Thr Ile Ser Asp Ile Met Ser Arg Pro			
174	370	375	380	
176	Asp Gly Thr Gln Arg Lys Leu Pro Val Pro Gln Val Pro Lys Val Ala			
177	385	390	395	400

RAW SEQUENCE LISTING

PATENT APPLICATION: US/09/936,367

DATE: 12/11/2003

TIME: 11:13:11

Input Set : A:\PTO.AMC.txt

Output Set: N:\CRF4\12082003\I936367.raw

179 Val Gln Asp Met Leu Asn Pro Ser Ala Gly Phe Ser Ser Val Ser Ser
180 405 410 415
182 Ser Thr Asn Asn Ser Val Ala Gly Asn Asp Leu Ala Glu Arg Phe
183 420 425 430

VERIFICATION SUMMARY

PATENT APPLICATION: US/09/936,367

DATE: 12/11/2003

TIME: 11:13:12

Input Set : A:\PTO.AMC.txt

Output Set: N:\CRF4\12082003\I936367.raw

L:1 M:259 W: Allowed number of lines exceeded, (1) GENERAL INFORMATION:

L:9 M:270 C: Current Application Number differs, Replaced Application Number

L:10 M:271 C: Current Filing Date differs, Replaced Current Filing Date